

## **Chapter 3.32**

### **CIGARETTE TAX**

(1247-10/66, 1350-10/67, 3751-11/06)

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**3.32.010 Definitions.** Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

- (a) "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in any greater part made of tobacco and such roll weighs over three pounds per thousand.
- (b) "Retailer" means any domestic or foreign corporation, association, syndicate, joint venture, joint stock company, partnership of any kind, club, Massachusetts business or common law trust, society or individual who sells cigarettes for any purpose other than resale. Where cigarettes are offered for sale through the means of a vending machine, the person holding title to the cigarettes in the machine shall be deemed the retailer.
- (c) "Use or consumption " includes the exercise of any right or power over cigarettes incident to the ownership thereof other than the sale of the cigarettes or the keeping or retention thereof for the purpose of sale. (1247-10/66, 1350-10/67)

**3.32.020 Tax imposed.** An excise tax is imposed upon the use or consumption in the city of cigarettes purchased from a retailer for use or consumption within the city at the rate of one and one-half mill per cigarette. (1247-10/66, 1350-10/67)

**3.32.030 Tax paid to retailer.** The tax constitutes a debt owed by the purchaser to the city which is extinguished only by payment of the tax to the Director of Finance or to the retailer. When a purchase from a retailer is made within the city, the tax shall be paid to the retailer at the time the purchase price is paid. The tax collected or required to be collected by the retailer constitutes a debt owed by the retailer to the city. Should any remittance of tax be made by a retailer prior to sale of cigarettes to a consumer, such remittance shall be considered as an advance payment to be reimbursed by adding the amount of the tax to the price of the cigarettes at the time of sale to the user or consumer. (1247-10/66, 1350-10/67)

**3.32.040 Retailer remits quarterly.** Each retailer selling cigarettes within the city shall collect the tax imposed under section 3.32.020, and on or before the last day of the month following the close of a calendar quarter remit the total amount so collected to the Director of Finance together

with a statement on a form provided by the Director of Finance showing the number of cigarettes sold to purchasers, the amount of tax collected, and such other information as the Director of Finance shall require. Where the Director of Finance determines that efficiency in the administration of the tax would be promoted, he may establish reporting periods greater than quarterly, but not to exceed one year. The Director of Finance may establish shorter reporting periods for any retailer if he deems it necessary in order to insure collection of the tax. Statements and payments are due immediately upon cessation of the business of selling cigarettes for any reason. All taxes collected by retailers pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the Director of Finance.

(1247-10/66,  
1350-10/67)

**3.32.050 Registration.** Within thirty days after the operative date of this chapter, or within thirty days after commencing business, whichever is later, each retailer shall register with the Director of Finance and obtain from him a "cigarette tax registration certificate" to be at all times posted in a conspicuous place on the premises; provided, however, each retailer who does not operate from a fixed place of business shall keep the registration certificate upon his person at all times while engaging in the business of being a retailer. No person shall engage in the business of being a retailer without obtaining a registration certificate therefor. Said certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the retailer's place of business;
- (c) The date upon which the certificate was issued;
- (d) "This Cigarette Tax Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the cigarette tax ordinance by collecting the cigarette tax from purchasers of cigarettes and remitting said tax to the Director of Finance. This certificate does not authorize any person to conduct any lawful business in an unlawful manner, nor to operate a cigarette retailing business without complying with all state and local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit."

(1247-10/66, 1350-10/67)

**3.32.060 Registration for each place of business.** A retailer having more than one place of business within the city at which cigarettes are sold shall be required to obtain a separate registration for each such place of business. (1247-10/66, 1350-10/67)

**3.32.070 Penalties and interest.** The following shall give rise to penalties and interest:

- (a) Original Delinquency Period. Any retailer who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.
- (b) Continued Delinquency. Any retailer who fails to remit any delinquent remittance within one month following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the tax in addition to amount of the tax and the 10 percent penalty first imposed.
- (c) Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a payment of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.
- (d) Interest. In addition to the penalties imposed, any retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of 1 percent per month or fraction

thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

- (e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.
- (f) Penalties during Pendency of Hearing of Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing which is provided for in section 3.32.090 nor during the pendency of any appeal to the City Council which is provided for in section 3.32.090 of this chapter. (1247-10/66, 1350-10/67)

**3.32.080 Failures to report and collect tax--Determination.** If any retailer fails or refuses, within the time provided for in this chapter, to make any report and remittance of said tax or any portion thereof required by this chapter, the Director of Finance shall proceed to obtain facts and information on which to base his estimate of the tax due. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any retailer who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such retailer the tax interest and penalties provided for. In case such determination is made, the Director of Finance shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the distributor so assessed at his last known place of address. Such retailer may within ten days after the serving or mailing of such notice make application in writing to the Director of Finance for a hearing on such amount assessed. If application by the retailer for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Director of Finance shall become final and conclusive and immediately due and payable. If such application is made, the Director of Finance shall give not less than five days written notice in the manner prescribed herein to the retailer to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the retailer may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After the hearing, the Director of Finance shall determine the proper tax to be remitted and shall thereafter give written notice to the retailer in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in section 3.32.090. (1247-10/66, 1350-10/67)

**3.32.090 Appeal.** Any retailer aggrieved by a decision by the Director of Finance with respect to the amount of such tax, interest and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal and the City Clerk shall give notice in writing to such retailer at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above in the service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (1247-10/66, 1350-10/67)

**3.32.100 Refund.** The following shall give rise to refunds:

- (a) Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City Treasurer under this Chapter, it may be refunded as provided in this Section. (3751-11/06)
- (b) The City Treasurer may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Treasurer under this Chapter, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the City Clerk within one year of the overpayment or erroneous

or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of five thousand dollars (\$5,000), City Council approval shall be required. (3751-11/06)

- (c) It is the intent of the City that the one year written claim requirement of this Section be given retroactive effect; provided, however, that any claims which arose prior to the enactment of the one year claims period of this Section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the City Clerk as provided in the subsection within ninety (90) days following the effective date of this Section. (1247-10/66, 1350-10/67, 3751-11/06)
- (d) The City Treasurer, or the City Council where the claim is in excess of five thousand dollars (\$5,000), and the City Treasurer has approved the claim, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the City Treasurer/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the City Treasurer/City Council on the forty-fifth (45<sup>th</sup>) day. The Treasurer shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913. (3751-11/06)
- (e) The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Sections 945.6 and 946. (3751-11/06)

**3.32.110 Actions to collect.** Any tax required to be paid by a retailer under the provisions of this chapter shall be deemed a debt owed to the city. Any person owing taxes under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (1247-10/66, 1350-10/67)

**3.32.120 Records.** It shall be the duty of every retailer liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of four years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the Director of Finance shall have the right to inspect at all reasonable times. (1247-10/66, 1350-10/67)

**3.32.130 Violations--Misdemeanor.** Any retailer who fails to furnish any required return to be made or who fails to furnish or refuses to furnish other data required by the Director of Finance, or who renders a false or fraudulent return or claim, is guilty of a MISDEMEANOR, and punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made is guilty of a MISDEMEANOR and is punishable as aforesaid. (1247-10/66, 1350-10/67)

**3.32.140 Application of provisions.** In order to comply with the requirement of those provisions of Chapter 963 of the Statutes of 1967 which provide that state cigarette tax revenues may not be allocated to any city imposing a selective local tax on, or with respect to, the sale, distribution, use, consumption, or holding of cigarettes or any other tobacco produce, after October 1, 1967, the provisions of Chapter 3.32 and all sections thereof of the Huntington Beach Municipal Code, relating to the imposition, collection and enforcement of a cigarette tax shall be suspended on and after October 1, 1967, and shall remain suspended and thereafter be of no force and effect so long as the provisions of the Revenue and Taxation Code of the state of California, as modified by Chapter 963 and pursuant to which the city is entitled to receive the allocation specified therein of the state cigarette tax revenues, are effective; provided, however, that in the event said Revenue and Taxation Code shall be further amended so that the city is not entitled to receive the allocation of the state cigarette tax revenues specified in said Chapter 963, then the

said provisions of Chapter 3.32 and all sections thereof of the Huntington Beach Municipal Code shall upon the effective date of such amendment become operative and effective; and further provided that in the event the provisions of said Revenue and Taxation Code, as added by said Chapter 963 and pursuant to which the city is entitled to receive the allocation specified therein of the state cigarette tax revenues, are for any reason declared invalid, then and in that event the said provisions of Chapter 3.32 and all sections thereof of the Huntington Beach Municipal Code shall not be deemed to have been suspended but shall be deemed to have been in full force and effect continuously from and after October 1, 1967. Nothing in this chapter shall be construed as relieving any person of the obligation to pay the city of Huntington Beach any cigarette tax accrued and owing by reason of said provisions of Chapter 3.32 and all sections thereof in force and effect prior to and including September 30, 1967. (1350-10/67)